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Proposed Changes to 38 CFR § 74

Note: This is a collection of proposed changes or clarifications to 38 CFR 74 collected from the stakeholder community. THIS IS A DRAFT ONLY AND IN NO WAY REPRESENTS VIEWS OR OPINIONS OF THE DEPARTMENT OF VETERANS AFFAIRS OR ANY OF ITS EMPLOYEES.

Key: New language is highlighted in yellow. Comments are in smaller red italics. All changes are numbered in the sequence that they were received in green.

When in doubt verify. That is absolutely the opposite of your current philosophy. In criminal law we have a belief that it is better for 10 criminals to go free than one innocent person be punished. I believe it is better for 10 fraudulent companies to be verified than one Veteran be victimized by your system. Current thousands of Veterans are shown little respect and dignity by your office and are made victims. 237

38 CFR 74.1 *The revisions in this section are meant to clarify the definitions provided and ensure that all definitions comply with title 38 USC 8127-8128* 1

For the purposes of part 74, the following definitions apply.

For the definitions, it would help to have terms that do not have legislative or regulatory definitions (e.g. full time) and put statements in that CVE will presume XXX unless otherwise specified in company written documentation. 2

This will work, but we will need to help negotiate reasonable presumptions. For example, with Full Time, it is specified by the company and can be different for different classes of employees. Definitions like these need to specify that "absent written company definition(s), CVE will presume..." 145

Definitions/interpretations should be consistent between federal agencies (i.e. SBA and VA)

- SBA should be the federal government authority for verification/certification of small business size, ownership, control, and anything related to small business status.*
- VA should be the federal government authority to verify a person's claim of veteran status.*

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Appeal means..... 99

~~Center for Veterans Enterprise~~ **Verification and Examination** 66 (CVE) is an office within the U.S. Department of Veterans Affairs (VA) and is a subdivision of VA's Office of Small and Disadvantaged Business Utilization. The CVE helps Veterans interested in forming or expanding their own small businesses. It also helps VA contracting offices identify Veteran-owned small businesses and works with the Small Business Administration's Veterans Business Development Officers and Small Business Development Centers nationwide regarding Veterans' business financing, management, and technical assistance needs.

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No support for changing the name of CVE to the Center for Verification and Examination. While CVE has not gotten bogged down with verifying veteran business owners its mandated mission was to educate and assist veterans seeking to do business with the VA and the federal government. 227

Certification either the affirmation made by the Veteran and/or VOSB to CVE of the veracity of statements made and information provided, or the status of a concern which is identified as being service connected disabled Veteran owned in the CCR SAM 215. The interchangeable use of this language causes confusion of issues particularly in discussion outside of the VA. 3

Certification either the affirmation made by the Veteran and/or VOSB or Veterans whose status is the basis for consideration for verification as an SDVOSB or VOSB, made to CVE of regarding the veracity of statements made and information provided, or the status of a concern which is identified as being service-connected disabled Veteran owned in the CCR. 100

** please note this is talking about CCR which has been replaced by SAM and as we all know this information is self certified, which was the cause of the problems prior to the verification program. Self-Certification should be removed entirely. There should not be a separate basis for SDVOSB representation from one agency to another. Fraud is Fraud! 203*

Control means..... 101

Days are calendar days. In computing any period of time described in part 74, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where CVE is closed for all or part of the last day, the period extends to the next day on which the agency is open.

Day-to-day management means supervising the executive team, formulating sound policies and setting strategic direction.

Day-to-day operations mean the marketing, production, sales, and administrative functions of the firm.

Debarred means..... 102

It is not necessary to define "debarred;" but if it is – use the definition in the FAR – or state that it means a person or entity listed on the Excluded Party's List. 182

Eligible individual means a Veteran, service-disabled Veteran or surviving spouse, as defined in this section.

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Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

Joint venture is an association of two or more small business concerns to engage in and carry out a single, specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. For VA contracts, a joint venture must be in the form of a separate legal entity. Both the joint venture and the underlying VOSB or SDVOSB upon which eligibility is based must be verified in accordance with this Part. The original regulation failed to directly address JVs although this definition is found elsewhere in the VAAR in response to questions from the field we added it to this section. 4

- Item 4 please note the definition of a joint venture can be found in 13 CFR 121.103, VAAR and far are only for guidance the law is within the CFR 204

Veteran-owned small business or service disabled Veteran-owned small business joint venture is when a Veteran, verified VOSB or verified SDVOSB concern enters into a joint venture agreement with one or more other small business concerns for the purpose of performing a VOSB or SDVOSB contract. This issue is often raised in the field as well as in verification process. While this language is clearly stated in the FAR recent court rulings have set the precedence that a policy of over inclusion will provide the best protection for the Department. 5 Joint Ventures typically are a combination of effort of two companies, not an individual and a company, as set forth in the new definition above. 183 Eliminate the redefinition of joint ventures. The guidance for joint ventures of SDVOBs was defined under PL 108-183. So if VOB or SDVOB has been VA verified, they should be allowed to simply follow the existing rules for joint ventures under the law and not be further scrutinized by CVE. 229

(1) Size of concerns to a VOSB or SDVOSB joint venture. Part 74 has no definition on JVs 6

- Item 6 this is major problem, for example many of the JVs verified in VetBiz are pass thru for other businesses and many are large business concerns for the appropriate NAICS codes, and using rent-a-vets
- Item 6 there many firms verified as LLC and they are actually JVs. 217

(i) A joint venture of at least one VOSB or SDVOSB and one or more other business concerns may submit an offer as a small business for a competitive VOSB or SDVOSB procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

Note item 6... Again i have to say this is major problem, this should happen during verification not at the time of contract award, see 13 CFR 121.103. 205

(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million;

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(ii) For sole source and competitive VOSB or SDVOSB procurements that do not exceed the dollar levels identified in paragraphs (b)(1)(i)(A) and (B) of this section, a VOSB or SDVOSB entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the VOSB or SDVOSB contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the VOSB or SDVOSB contract.

This new definition of a "small" SDVOSB/VOSB joint venture comes from the small business regs at 13 CFR Part 121. However, if VA decides to adopt this definition, it should also adopt as part of the definition the "3 in 2" rule included in the SBA regulations. 184

(2) Contents of joint venture agreement. Every joint venture agreement to perform a VOSB or SDVOSB contract must contain a provision:

(i) Setting forth the purpose of the joint venture;

(ii) Designating a VOSB or SDVOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the VOSB or SDVOSB contract. [The managing venture and project manager may be the same person 103];

~~(iii) Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the VOSB or SDVOSB; 219~~

(iii) Stating that the VOSB and/or SDVOSB participant(s) must receive profits from the joint venture commensurate with the work performed by them, or in the case of a populated separate legal entity joint venture commensurate with their ownership interests in the joint venture. 220

The partners to an unpopulated Joint Venture rarely push profits to the JV rather, each partner becomes a subcontractor to the JV upon contract award and maximizes its own profit internally and does not push profit to the JV. Therefore, if the language is not changed, the non-VOSB/SDVOSB could tell the JV that it will maintain a 25% margin and that the VOSB/SDVOSB partner would be expected to maintain a 2% margin if the VOSB or SDVOSB partner wants to have the non-VOSB firm as a partner. This happens and should be prevented by changing the language. It's not net profits, it's commensurate profits. 221

(iv) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the VOSB or SDVOSB contract;

(v) Obligating all parties to the joint venture to ensure performance of the VOSB or SDVOSB contract and to complete performance despite the withdrawal of any member [member party to the venture 104];

(vi) Requiring the final original records to be retained by the managing venturer upon completion of the VOSB or SDVOSB contract performed by the joint venture;

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The requirements above, again, are taken from the SBA 8(a) Joint Venture regs at 13 CFR 124.513, but not all the requirements are included. If you are going to borrow from SBA's regs – should not pick and choose. 185

(3) Performance of work. For any VOSB or SDVOSB contract, the joint venture, as the prime contractor, must perform the applicable percentage of work required by VAAR clause 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside. or VAAR clause 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside, as applicable.

(4) Contract execution. The procuring activity will execute a VOSB or SDVOSB contract in the name of the joint venture entity.

(5) Inspection of records. VA may inspect the records of the joint venture without notice at any time deemed necessary.

All reference to JV should be removed. JV's should not be verified. The requirements in the FAR and VAAR are sufficient. This is a Contracting Officer due diligence issue. 146

Negative control includes, but is not limited to, instances where a minority shareholder or owner has the ability, under the concern's organizing documents such as, the by-laws, operating agreement, partnership agreement or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders. *Veteran owner [or owners 105]. Negative control can be present in all legal business entities. We have expanded the wording, which previously appeared to specify corporations- to address other entity types. 8*

This goes to the heart of the definition of control as either strategic, tactical or operational. If I can overcome a negative control issue at any time (e.g. by shareholder vote to change the board) then I have control. This is a factor of precedence for 38 CFR 74.4(f)(1) and 38 CFR 74.4(g). 147

Negative control and Control needs to be better defined and not be subject to interpretation by the CVE reviewers. These definitions should not be so stringent that they prevent a veteran business owner from bringing in a non- veteran as a minority business partner. 230

Non-Veteran means any individual who does not claim Veteran status, or upon whose status an applicant or participant does not rely in qualifying for VetBiz Vendor Information Pages (VIP) Verification Program participation.

This is important from the "interpretive" perspective of why bother to challenge, document, etc. individuals that have no impact on verification – waste of resources. 148

Office of Small and Disadvantaged Business Utilization is the office within the Department of Veterans Affairs that establishes and monitors small business program goals at the prime and subcontract levels and which functions as the ombudsman for Veterans and service-disabled Veterans seeking procurement opportunities with the Department.

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Participant means a Veteran-owned small business concern that has verified status in the VetBiz Vendor Information Pages database.

Permanent caregiver, for purposes of this Part, is the spouse, or an individual, 18 years of age or older, who is legally designated, in writing, to undertake responsibility for managing the well-being of the service-disabled Veteran with a permanent and severe disability, as determined by VA's Veterans Benefits Administration, to include housing, health and safety. A permanent caregiver may, but does not need to, reside in the same household as the service-disabled Veteran with a permanent and severe disability. In the case of a service-disabled Veteran with a permanent and severe disability lacking legal capacity, the permanent caregiver shall be a parent, guardian, or person having legal custody. There may be no more than one permanent caregiver per service-disabled Veteran with a permanent and severe disability. *This definition was added to provide clarity. The terms are taken from VBA regulation and also complies with title 38 USC 8127(f) 9*

This is a good add, but should be limited to just referring to the specific VBA regulation. Keep it simple.
149

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the participant. The NAICS code designations are described in the North American Industry Classification System (NAICS) Manual published by the U.S. Office of Management and Budget.

Principal place of business means the business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's current business records are kept. If the office from which management is directed and where the current business records are kept are in different locations, CVE will determine the principal place of business for program purposes.

Principal place of business needs to be better defined. Veteran business owners should not be limited to managing their business from their principal office. Especially in the situation where there are multiple veteran business owners that make of the majority. How should this rule apply in this situation? 231

Reconsideration means..... 106

Same or similar line of business means business activities within the same three-digit "Major Group" of the NAICS Manual as the primary industry classification of the applicant or participant. The phrase "same business area" is synonymous with this definition.

Service-disabled Veteran is a Veteran who possesses either a **valid** disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a **valid** disability determination from the Department of Defense and is registered in the Beneficiary Identification and Records Locator Subsystem maintained by the Department's Veterans Benefits Administration.

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This is both the recommendation of the GAO oversight and investigation report and current practice at CVE. GAO identified inclusion in BIRLS as a superior method of identifying status to avoid fraud and abuse. For these reasons we believe it is the VA's best interest to clarify this practice in the regulation. Do DoD disability determinations get recorded in BIRLS? 10 Is there an equivalent registry of those with a DoD disability rating? If not, how does a DoD rated vet get on BIRLS? 107 Must specify that requirement is still the specified documents. Can clarify as BIRLS will be the primary method of due diligence, but BIRLS has some anomalies. 150

Service-disabled Veteran-owned small business concern (SDVOSB) is a business not less than 51 percent of which is owned by one or more service-disabled Veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled Veterans; the management and daily business operations of which are controlled by one or more service-disabled Veterans, or in the case of a Veteran with a permanent and severe disability total service-connected disability, a spouse or permanent caregiver of such Veteran. In addition, some businesses may be owned and operated by an eligible surviving spouse. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify. *This conforms with the language used in Title 38 USC 8127(i)(2)(B) 11*

Need to specify that ownership, ownership interest and membership interest are used interchangeably. Also need to remove the daily business operations or at least qualify based upon definition of control. 151

Redefine an SDVOSB as "a VOSB that....." 225

Small business concern is—CVE applies the small business concern definition established by 48 CFR 2.101.

Need to remove or specify that size is an SBA responsibility ...or that VA contracting officers should rely on SAM for determination of size...but then again, this should be in VAAR not 38 CFR 74. 152 The definition of small business concern should track to SBA's regs and the size standards published by SBA. 186

Remove all references to size requirements of the company. Since size standards for small businesses are established by the SBA, there is no need for CVE to implement an additional process of verifying size. They can simple refer to the SBA size standards. 228

Surviving spouse is any individual identified as such by VA's Veterans Benefits Administration and listed in its database of Veterans and family members. To be eligible for VetBiz VIP Verification, the following conditions must apply:

- (1) If the death of the Veteran causes the small business concern to be less than 51 percent owned by one or more Veterans, the surviving spouse of such Veteran who acquires ownership rights in such small business shall, for the period described in paragraph (2) of this definition, be treated as if the surviving spouse were that Veteran for the purpose of maintaining the status of the small business concern as a service-disabled Veteran-owned small business.

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(2) The period referred to in paragraph (1) of this definition is the period beginning on the date on which the Veteran dies and ending on the earliest of the following dates:

- (i) The date on which the surviving spouse remarries;
- (ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;
- (iii) The date that is 10 years after the date of the Veteran's death; or
- (iv) The date on which the business concern is no longer small under Federal small business size standards.

(3) The Veteran must have had a 100 percent service-connected disability **rating** or died as a direct result of a service-connected disability. *To clarify that this is an official determination from VA. 12*

Note to definition of surviving spouse: For program eligibility purposes, the surviving spouse has the same rights and entitlements of the service-disabled Veteran who transferred ownership upon his or her death.

1. Added Clarification to Surviving Spouse Eligibility Designation
 - a. *Provide grace period to previously verified SDVOSB firms, which is equal to the time it takes the VBA to adjudicate the DIC Claim from the surviving spouse. (Typically a 12-18mo DIC Claim Process)*
 - i. *Claim must be filed with the VBA within 90 days from the date in which the Veteran passed*
 - ii. *Grace period is limited to the initial adjudication made by the VBA. The grace period does not extend beyond the date of the initial adjudication, in the event of any appeal.*
 - iii. *Applicable to firms who have already submitted verification documents to CVE, which are awaiting determination from CVE, and veteran passes prior to such determination.*
 - iv. *For CVE Verification, during grace period, you would need to provide the following: Marriage license, Death Certificate, Proof of 51% ownership or greater.*
 - b. *Eligibility of award for proposals submitted prior to the death of the Veteran*
 - i. *Eligibility is limited only to those firms that were verified at the time in which the Veteran passed.*
 - ii. *Eligibility is extended to proposals submitted during a DIC Claim grace period, prior to initial adjudication by VBA.*
2. Expand Surviving Spouse Eligibility (Promotes Continuity of the SDVOSB Program)
 - a. *Include all disabled veterans, regardless of disability rating or death as a result of service connected disability or injuries.*
 - i. *It is consistent with the mission of the VA*
 - ii. *Provides continued financial stability to the veteran's family as opposed to immediate financial hardship as a result of the veterans passing.*
 - iii. *Provides opportunity for Veteran succession planning from one veteran to another.*
 1. *Odds are stacked against new business start-ups*
 2. *Current economic climate provides even greater challenge to our veterans returning home from duty/war*

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- 3. *Promotes the Veteran Community to help one another through mentorships*
- 4. *Promotes continued growth and long-term success of the SDVOSB program.*
- b. *Include Veteran Offspring, who were/are part of the business at the passing of the Veteran.*
 - i. *Many SDVOSB's are family owned businesses.*
 - ii. *Many are multi-generational businesses*
 - iii. *Entire families solely dependent upon the Veteran Owner and to allow children of the Veteran to also assume similar rights as a surviving spouse, is appropriate and reflective of the typical "small family business" of the SDVOSB community.*

This is an added benefit and opportunity for the Men and Women who have served this country at NO COST TO THE TAX PAYER. Not only did the men and women of the armed forces make sacrifices, so did their families.

To immediately limit the participation within the SDVOSB program as a result of the death of a veteran, especially in the case of a sudden and unexpected death, is a travesty to the veteran community, the VA, and the essence of the SDVOSB program.

Small businesses rarely get the luxury of planning for succession until it is too late. But that can change with SDVOSB companies. Extending surviving spouse eligibility, offers opportunity for those companies to use those 10 years to make and implement succession strategies. Hopefully those strategies include a succession plan to continue disabled veteran ownership. 206

Definition of surviving spouse should simply refer to governing law and not try to redefine it by CVE. 232

Suspension means 108

*Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing 61 ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. *Need to define the difference between ownership benefits and ownership interest and which needs to be unencumbered. 13**

Unconditional ownership should not be so pervasive that a minority owner has not rights. This definition should not be so narrowly defined that it discriminates against veteran business owners who need a partner(s) to exercise their business. 233

VA is the U.S. Department of Veterans Affairs.

*Vendor Information Pages (VIP) is a database of businesses eligible to participate in VA's **Service Disabled Veteran-Owned Small Business (SDVOSB) or 109** Veteran-owned Small Business **(VOSB) Verification 72** Program. The online database may be accessed at no charge via the Internet at <http://www.VetBiz.gov>.*

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Verification the VA uses the term *verified* to mean[s] that [the process used by] the Center for Veterans Enterprise has undergone review of the [status of a] Veteran, his status as well as all supporting evidence of his [the Veteran's or Veterans'] ownership and control of the firm in compliance with the regulation and statute and has approved its subsequent inclusion in the VIP database listing. 67 110

The statute says that CVE shall verify claims made by the vet. This language should be consistent with the statute 153

Verified means CVE has approved a firm for inclusion in the SDVOSB/VOSB database. 111

Verification eligibility period is a 12 ~~24~~-month 68 112 period that begins on the date the Center for Veterans Enterprise issues the approval letter establishing verified status. [During that period, ~~It~~ 113]he participant must submit a new application [each year any time when changes to the ownership and control occur 114] to continue eligibility. [CVE will review such changes to determine whether the firm continues to be eligible for inclusion in the SDVOSB/VOSB database. 115] When such changes are reviewed, CVE shall have the option of renewing the 48 month certification period. The participant must submit a new application at the end of each eligibility period to continue eligibility.

69 In the past, concerns which had surpassed the 12 month period were left in the VIP listing causing confusion and problems with awards particularly when it was found that the concern was no longer eligible based upon further review and inspection. A clear statement will help alleviate this problem by establishing for the Veteran owner that he holds the burden of re-applying.

*This should be reconciled with the new 74.16 section on maintaining verified status. 7
This should be changed to 3 years (5 years) with the simplified annual reverification. A simple form, not the way that it was previously implemented by CVE. 154*

Verification Examiners. *Many VOSB and SDVOSB owners have chafed at having a 26 year-old, non-Veteran conduct their on-site examination. Examination should be defined as an inherently governmental function and thus be conducted ONLY by VA employees and not by contractors. 218*

VetBiz.gov (VetBiz) is a Web portal VA maintains at <http://www.VetBiz.gov>. It hosts the Vendor Information Pages database.

Veteran is a person who served on active duty with the U.S. Army, Air Force, Navy, Marine Corps or Coast Guard, for any length of time and at any place and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to Federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a Veteran. A Veteran that is recalled to or otherwise serving on active duty does not meet[s] this definition [for a period of 18 months for purposes of continuing a previously determined status as a qualified owner of a verified SDVOSB OR VOSB 116]. *This issue has been raised via verification decisions and protests neither the statute nor the regulation contains an exception for these Veterans at this time. 14*

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This has also been an issue related to “special Government employee” and needs discussion to clarify. 155

Item 14 this is was raised with the protest of Peterson when the firm was actually controlled by Testa Construction and the veteran was serving on active duty. I disagree with this, when the veteran is serving his company should be deleted from VetBiz as happened when a veteran is deceased, upon his/her return they should be fast tracked. 207

Definition for Veteran and Service Disabled Veteran should be the same as the existing definitions as described in the law. 235

Veteran-owned small business concern (VOSB) is a small business concern that is not less than 51 percent owned by one or more Veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more Veterans; the management and daily business operations of which are controlled by one or more Veterans and qualifies as “small” for Federal business size standard purposes. All service-disabled Veteran-owned small business concerns (SDVOSBs) are also, by definition, Veteran-owned small business concerns. When used in these guidelines, the term “VOSB” includes SDVOSBs.

Veterans Affairs Acquisition Regulation (VAAR) is the set of rules that specifically govern requirements exclusive to the U.S. Department of Veterans Affairs (VA) prime and subcontracting actions. The VAAR is chapter 8 of title 48, Code of Federal Regulations, and supplements the Federal Acquisition Regulation (FAR), which contains guidance applicable to most Federal agencies.

38 CFR 74.2

§ 74.2 What are the eligibility requirements a concern must meet for VetBiz VIP Verification Program? *The additions and clarifications here are meant to logically include issues which may have been placed elsewhere or were previously unaddressed.* 15

(a) *Ownership and control.* A small business concern must be unconditionally owned and controlled by one or more eligible Veterans, service-disabled Veterans or surviving spouses, **has** 62 completed the online Vendor Information Pages database forms at <http://www.VetBiz.gov>, and has been examined by VA's Center for Veterans Enterprise. Such businesses appear in the VIP database as “verified.”

There is ambiguity about completion of forms in that there really is not a requirement to submit documentation other than forms. This needs to be corrected in several places. 156

(b) *Good character* [**of Discharge and Excluded Parties List**. ~~Veterans, service-disabled Veterans and surviving spouses with ownership interests in VetBiz verified businesses must have good character.~~ 117] **Persons determined [to have a dishonorable discharge for VA purposes are not ineligible for VetBiz VIP Verification.** 118] [*This language is in*

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keeping with that found in title 38 USC 8127 16] Debarred or suspended concerns or concerns owned or controlled by [persons with a dishonorable discharge or 119] debarred or suspended persons are ineligible for VetBiz VIP Verification. If, after verifying the Participant's eligibility, CVE the firm is subsequently suspended or debarred by VA or any other agency or Department, or the Veterans status is determined to be other than honorable for VA purposes, CVE will remove the "verified" status from the VIP database immediately, notwithstanding the provisions of section 74.22 of this Part and notify the business. These consequences are in keeping with the results in §§74.2(b) and (c) 17

Not necessary. Should be removed. 157

Definition of Good Character should be fair and reasonable. Any veteran owner with a more than dishonorable discharge should be included. Veterans with past felony convictions who have completed their time or debt regarding that infraction should not continue to penalized. 236

(c) *False statements or information. 63* If, during the processing of an application, CVE determines that an applicant has knowingly [intentionally 120] submitted false statements or information [or withheld information that would render the applicant ineligible for inclusion in the SDVOSB/VOSB database 121], [*This is the current standard by which CVE refers concerns for review by the OIG and debarment. 18*] CVE will deem the concern to have acted [knowingly intentionally 122], and regardless of whether correct information would cause CVE to deny the application, and regardless of whether correct information was given to CVE in accompanying documents, CVE will deny the application. If, after verifying the Participant's eligibility, CVE discovers that false statements [*The false information often comes in the form of statements made to CVE representatives in the course of onsite examinations. 19*] or information has been knowingly submitted by a firm, CVE will remove the "verified" status from the VIP database immediately, notwithstanding the provisions of section 74.22 of this Part. [*This would allow CVE to act in accordance with similar circumstances such as a negative determination from SBA, and reserve resources otherwise utilized by the cancellation process. 20*] and notify the business by ~~phone~~ and mail email [*Currently the mail process is exceedingly cumbersome for CVE and other means assist in expediting the process which results in timely and fair decisions and reconsiderations as needed. 21*]. Whenever CVE determines that the applicant [intentionally 123] submitted false statements or information, the matter will be referred to the Office of Inspector General for review. In addition, the CVE will request that debarment proceedings be initiated by the Department.

Not necessary. Should be removed. 158

VA should be aware that, under the Small Business Jobs Act, the Government will deem contractors to have knowingly and intentionally certified as to their status. Whatever definition adopted here for false statements/information should be consistent with the Jobs Act language. 187

(d) *Federal and State* [*The same concerns which lead VA to seek to avoid awarding to concerns with federal debts apply to state debts and liens. Policy call on this proposed addition. 22*] *financial obligations.* Neither a firm nor any of its eligible individuals that fails to pay significant

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financial obligations owed to the Federal or a State Government, including unresolved tax liens and defaults on Federal or State loans or other Federally assisted financing, is eligible for VetBiz VIP Verification.

This should be removed. It does not affect either ownership or control. If VA wants these criteria should be part of the VAARs and contracting officer responsibility. 159

(e) U.S. Small Business Administration (SBA) protest decisions or other negative findings. Any firm registered verified in the VetBiz VIP database that is found to be ineligible due to an SBA protest decision or other negative finding will be immediately removed from the VetBiz VIP database, notwithstanding the provisions of section 74.22 of this Part [See comment 19 regarding False Statements. 23]. Until such time as CVE receives official notification that the firm has proven that it has successfully overcome the grounds for the determination or that the SBA decision is overturned on appeal, or the firm applies for and receives verified status from CVE, the firm will not be eligible to participate in the 38 U.S.C. 8127 program.

This again is contracting officer due diligence. Other problem is how to give precedence to SBA status for other than VA procurement determination versus verification. Should be a two way street with SBA/VA MoA or MOU. 160

I oppose the inclusion of "or other negative findings." What does that mean? That term leaves it open to interpretation of each individual reviewing the verification application. 188

Note my comments to paragraph (e) once a firm is determined ineligible either by the SBA or the VA resulting from a protest decision the firm should be barred from doing business with the federal govt for a period time not giving the opportunity to overcome the grounds for the determination.

I have knowledge of 2 firms that have protested successfully twice both firms are now verified..DB'S 962172750 AND 830713637. 208

(f) A concern must be licensed and registered in accordance with applicable state or local law. This issue is often raised in status protests and this change further protects the interests of the VA in awarding procurement dollars. 24

Item 24 is another major problem the VA has verified firms that are performing A & E services NACIS code 541310 and 541330 that are not licensed professional engineers, for example DB 967480505 is a real estate agent being used by his partners to perform AE services, another firm is verified the owner is not a professional engineer and is on active duty. 209

Should be removed as another CO due diligence. Also, too many ambiguities here. I've generally seen this as related to A/E issues which are way outside the purview of CVE. 161

§ 74.3 Who does the Center for Veterans Enterprise (CVE) consider to own a Veteran-owned small business?

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An applicant or participant must be at least 51 percent unconditionally and directly owned by one or more Veterans or service-disabled Veterans.

(a) *Ownership must be direct.* ~~Ownership must be direct.~~ **Except as follows, an applicant must be owned** ~~Ownership must be direct.~~ **Ownership 124]** by one or more Veterans or service-disabled Veterans ~~Ownership must be direct.~~ **[without an intervening entity such** ~~Ownership must be direct.~~ **as must be direct ownership.** An applicant or participant owned ~~Ownership must be direct.~~ **principally by 125]** another business entity or by a trust (including employee stock ownership plans [ESOP]) that is in turn owned by one or more Veterans or service-disabled Veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a Veteran or service-disabled Veteran where the trust is revocable, and the Veteran or service-disabled Veteran is the grantor, a trustee, and the sole current beneficiary of the trust. For employee stock ownership plans where 5 or fewer persons who are individuals, estates, or trusts own 50 percent or more of the total combined voting power of the corporation, the employee plan will be determined to be “excluded stock” and eligible parties must control 51 percent or more of the combined voting power of the corporation. For employee stock ownership plans where greater than 5 persons who are individuals, estates, or trusts own 50 percent or more of the total stock, eligible parties must control 51 percent or more of the combined voting power of the corporation, including the ESOP stock.

(b) *Ownership must be unconditional.* ~~Ownership must be unconditional.~~ Ownership by one or more Veterans or service-disabled Veterans must ~~Ownership must be unconditional.~~ **[be unconditional ownership. Ownership must 126]** not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. In particular, CVE will evaluate ownership according to the following criteria for specific types of small business concerns.

(1) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more Veterans or service-disabled Veterans. The ownership must be reflected in the concern's partnership agreement.

(2) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more Veterans or service-disabled Veterans.

(3) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the

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aggregate of all stock outstanding must be unconditionally owned by one or more Veterans or service-disabled Veterans.

(c) *Stock options' effect on ownership.* In determining unconditional ownership, CVE will disregard any unexercised stock options or similar agreements held by Veterans or service-disabled Veterans. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-Veterans will be treated as exercised, except for any ownership interests that are held by investment companies licensed under part 107 of title 13, Code of Federal Regulations.

(d) *Profits and distributions.* One or more Veterans or service-disabled Veterans must be entitled to receive:

- (1) At least 51 percent of the annual distribution of profits paid to the owners of a corporate, partnership, or LLC applicant or participant;
- (2) At least 51 percent of the net profits earned by a joint venture in which the applicant or participant is the lead concern;
- (3) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and
- (4) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation, partnership, or LLC.
- (5) An eligible individual's ability to share in the profits of the concern should be commensurate with the extent of his/her ownership interest in that concern.

(e) *Change of ownership.*

- (1) A participant may remain eligible after a change in its ownership or business structure, so long as one or more Veterans or service-disabled Veterans own and control it after the change and the participant files a new application identifying the new Veteran owners or their new business interest.
- (2) Any participant that is performing contracts and desires to substitute one Veteran owner for another shall submit a proposed novation agreement and supporting documentation in accordance with FAR Subpart 42.12 to the contracting officer prior to the substitution or change of ownership for approval.
- (3) Where the transfer results from the death or incapacity due to a serious, long-term illness or injury of an eligible principal, prior approval is not required, but the concern must file a new application with contracting officer and CVE within 60

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days of the change. Existing contracts may be performed to the end of the instant term. However, no options may be exercised.

(4) Continued eligibility of the participant with new ownership and the award of any new contracts require that CVE verify all eligibility requirements are met by the concern and the new owners.

~~(f) Community property laws given effect. In determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims Veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws. Since VA's VOSB verification program is a Federal program, VA is not obligated to take into account state community property laws. That is a policy judgment for the agency 25 The regs need a positive statement on the effect of community property rights shall not be cause for denial and the conditions under which such firms could continue to be eligible following a divorce that affects ownership and control. 126~~

This should be changed to community property considerations are a future event and therefore do not affect ownership considerations. 162

The SBA, I think, has dealt with the community property issue before and perhaps their regulations may be helpful. 189

There is a suggestion to exempt the constraint of the right of first refusal for the Veteran selling shares of his/her stock. 26

Right idea, but per "encumbrance" this is a CVE interpretive error. 163

There should be a discussion on whether a veteran's ownership in an LLC is considered "conditional" if the veteran agrees in the operating agreement to give the other member or members a right of first refusal or tag along rights etc. If the operating agreement allows the veteran to amend it at his discretion at any time – these type of provisions should be allowed. 190

Striking this paragraph in its entirety creates a conflict with the 51% ownership regulation and the 100% control requirement.

You can't strike one paragraph, and uphold the other without a direct conflict in the law. In a community property state a business owner that is married cannot have 51% ownership, and therefore 100% control of his/her business.

If the paragraph is to be re-written it needs to include the opportunity, in community property states, for the veteran to show proof that the spouse has legally relinquished any right/control to the business.

A SDVOSB from CA was recently protested based on this rule, and it was denied by the VA because the contractor showed "proof" that there was no community property interest based on documents that the contractor stated were filed with the State, even though the state did not receive the change in ownership until after the protest was filed. The VA made this determination as a "policy judgment" and because they didn't verify the statements of the contractor with the governing body, the state involved, they got it wrong, and awarded a contract to a vet that did not meet the 51% ownership and 100% control requirements at the time of award.

This language must be included, and enforced as part of the verification process. 210

§ 74.4

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I'm concerned about "control" as it relates to service disabled veterans and the Rehabilitation Act. Many veterans are 70, 80, 90 percent disabled and require a reasonable accommodation, which may entail delegating certain day-to-day management and operations responsibilities. 213

SBA needs to define control, not VA 214

(a) Control means **the exercise of** both the day-to-day management and long-term decision-making authority **for of** the VOSB. ~~Many persons share control of a concern, including each of those occupying the following positions: Officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share~~ **exercise subordinate significant** control of the concern. **Exercise of subordinate control by employees other than the owners does not in and of itself constitute grounds to deny an applicant status as an SDVOSSB or VOSB.** CVE will consider the control potential of such key employees on a case-by-case basis. 127 *The term "control" is the same as the term "pregnant" – you can't be partially pregnant and you can't have "subordinate control" – it's an oxymoron.*

The language also creates a question with regard to a company owned by more than one veteran. If there is a company that has three members, each of which own 33% of the company and two of which are veterans – what does it mean that the veterans have to control the company? Is it enough that the non-veteran cannot block the decision of either veteran or do the veterans always have to vote as a block – so the decision reflects a majority vote? Does each veteran have to completely control the company or can one veteran control some aspects and the second veteran control other aspects? 191

(b) ~~Control is not the same as ownership, although both may reside in the same person. CVE regards control as~~ **also** including **s both** 128 the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or participant's management and daily business operations must be conducted by one or more Veterans or service-disabled Veterans. Individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A Veteran need not have the technical expertise or possess a required license to be found to control an applicant or participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, where a critical license is held by a non-Veteran having an equity interest in the applicant or participant firm, the non-Veteran may be found to **be capable of exercising negative** 129 control the firm.

The new language inserted in the sentence above does not change the meaning of the sentence; "may be found to control" means the same thing as "may be found capable of exercising negative control" – why is the new language necessary? 192

(c)(1) An applicant or participant must be controlled by one or more ~~Veterans or a service-disabled Veterans~~ **qualified owners** 130 who possess requisite management capabilities. ~~Owners need not~~ **Not all owners** [*This change clarifies the intent of this restriction so that it can be read together /harmoniously with 38 CFR 74.4(c)(3). 27*] **need to** work full-time but **all owners** 70 must show ~~sustained and significant~~ **an appropriate amount of** 131 time

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invested in the business and CVE shall consider the roles of employees to whom subordinate control has been delegated in determining whether an owner or owners are exercising a level of control to qualify for SDVOSB or VOSB status. Ownership of more than one business shall not be sufficient grounds for denial as long as the owner or owners can demonstrate they are capable in terms of time, their control of long term policy and day-today operations. When reviewing such ownership and control, CVE shall take into consideration the amount of delegation of subordinate control to employees. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the application which demonstrates that such activities will not have a significant impact on the owner's ability to manage and control the applicant concern. Applications from joint ventures are exempt from the requirement to submit a supplemental written statement. 132

Comes back to definition of control. Outside employment is a red herring. CVE MUST set standard of what constitutes control. For some businesses, these issues may take a couple of hours a month. For most businesses, this requires little more than a couple of hours a week – less if you hire good people (which CVE interpretations seem to discourage) 164

I don't understand the justification not deleting the reference to veterans in the regulation above and substituting "qualified owners" – that is not a defined term in the regs. The issue addressed in this regulation, however, is the biggest hurdle for veterans and the biggest complaint I receive from clients. Most veterans start their business while working at another business. The new business can operate even though the veteran is working less than a full day or the veteran is working hours other than "normal business hours." The regulations need to take this into account; otherwise, many, if not a majority, of businesses started by veterans will not be eligible for verification. Similarly, many well-known businessmen (Sam Walton, Donald Trump) own numerous businesses at the same time. This is especially true because companies are often created for tax or legal reasons rather than to signify that the veteran owner is splitting his time or focus among different ventures. 193

(2) An eligible full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or participant.

~~(3) One or more Veterans or service-disabled Veteran owners who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business. 133 Work in a wholly-owned subsidiary of the applicant or participant may be considered to meet the requirement of full-time devotion. This applies only to a subsidiary owned by the VOSB itself, and not to firms in which the veteran has a mere ownership interest. 28~~

The regulation above requiring a full-time manager is the most controversial regulation in Part 74. On the one hand, the regulations say the veteran owners does not have to devote full time to the business but, on the other hand, the business has to have a veteran manage the business full time. Unless the veteran owners hires another veteran to be a manager, these two regulations are inconsistent. This inconsistency needs to be fixed. 194

(4) ~~Except as provided in paragraph~~ In addition to paragraph (f)(1) of this section, *[This issue has been raised as the current language appears to create exceptions that would be*

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unfair to Veteran owners whose firms take other legal forms such as corporations and partnerships. 29], the applicant or participant must demonstrate control as defined in sub section (a). A Veteran owner's unexercised right to cause a change in the management of the applicant concern does not in itself constitute Veteran control, regardless of how quickly or easily the right could be exercised.

This goes back to definition of strategic, tactical or operational and shows a total lack of understanding of how [small] business really functions. 165

(d) In the case of a partnership, one or more Veterans or service-disabled Veterans must serve as general partners, with control over all partnership decisions. A partnership in which no Veteran is a general partner will be ineligible for participation.

(e) In the case of a limited liability company, one or more Veterans or service-disabled Veterans must serve as management members, with control over all **business 134** decisions *[A written, this would include where and what is eaten for lunch. Need to specify what types of decisions, e.g markets served, resource allocations, loans, strategic partners 166]*of the limited liability company, **except for extraordinary business decisions [The VA, both OSDBU and CVE, has determined that such supermajorities requirements as dissolution of the concern, liquidation of all assets and other similarly detrimental decisions, can be exempted from the meaning of control as defined by 38 CFR 74.4 (a) and (b). 30 again shows lack of practical business knowledge 167]; e.g., selling or otherwise disposing of all of the firm's assets, entering into any business substantially different from the business as established at formation, filing for bankruptcy, receivership, or admit the firm is insolvent.**

I would not use the term "extraordinary decisions". I would say decisions unrelated to the daily operations of the business" and specifically list those type of decisions.

Again, how does voting affect control? If decisions are made by majority vote and the veteran has the majority vote – he clearly controls the company. However, if there are two veterans that each own a minority interest – such as 33% each, does one veteran control the company even though his vote is not a majority vote? If majority vote is required, that means the veterans always have to vote together and can't disagree. It that the intention here? 195

(f) One or more Veterans or service-disabled Veterans must control the board of directors of a corporate applicant or participant **by meeting the requirements of both subsections (1) and (2) where;** *[The changes to subsection (f) are meant to clarify that all parts should be read in harmony with each other. In addition, the current language appears to create exceptions that would disadvantage Veteran owners whose firms take other legal forms such as LLCs and partnerships 31 Again, comes back to definition of control. Need to get some folks who have actually owned a business to provide inputs. 168]*

(1) CVE will deem Veterans or service-disabled Veterans to control the board of directors where:

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(i) A single Veteran owns 100 percent of all voting stock of an applicant or participant concern **and** each such Veteran is on the board of directors; **or** 32

(ii) A single Veteran owns at least 51 percent of all voting stock of an applicant or participant, the individual is on the board of directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where supermajority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by State law, the Veteran must own at least the percent of the voting stock needed to overcome any such supermajority voting requirements; **or** 33

(iii) No single Veteran owns 51 percent of all voting stock but multiple Veterans in combination do own at least 51 percent of all voting stock, each such Veteran is on the board of directors, no supermajority voting requirements exist, and the Veteran shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has supermajority voting requirements, the Veteran shareholders must own at least that percentage of voting stock needed to overcome any such supermajority ownership requirements; **and**, 34

I've discussed the provision above with a number of corporate lawyers and no one knows what this means. Does this mean that the veterans always have to vote as a block? Do the veteran shareholders together have to own enough to beat a supermajority? 196

(2) **In addition to the requirements set forth in paragraph (f)(1) of this section** 35, the Veteran(s) upon whom eligibility is based must control the board of directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (e.g., in a concern having a two-person board of directors where one individual on the board is a Veteran and one is not, the Veteran vote must be weighted—worth more than one vote—in order for the concern to be eligible for VetBiz VIP Verification). Where a concern seeks to comply with this paragraph:

(i) Provisions for the establishment of a quorum cannot permit non-Veteran directors to control the board of directors, directly or indirectly;

(ii) Any executive committee of the board of directors must be controlled by Veteran directors unless the executive committee can only make recommendations to and cannot independently exercise the authority of the board of directors.

(3) Non-voting, advisory, or honorary directors may be appointed without affecting Veterans' or service-disabled Veterans' control of the board of directors.

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(4) Arrangements regarding the structure and voting rights of the board of directors must comply with applicable state law.

(g) Non-Veterans may be involved in the management *[Management is not the same as control. Need to have understanding of corporate governance best practices. 169]* of **delegated subordinate management and control of** 134 an applicant or participant, and may be stockholders, partners, limited liability members, officers, or directors of the applicant or participant. With the exception of a spouse or personal **permanent** *[The addition of this word aligns this provision with the language used in the 8127 statute. 36]* caregiver who represents a severely disabled Veteran owner, no such non-Veteran or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or participant;

(2) Be a former employer or a principal of a former employer of any affiliated business of the applicant or participant, unless it is determined by the CVE that the relationship between the former employer or principal and the eligible individual or applicant concern does not give the former employer actual control or the potential to control the applicant or participant and such relationship is in the best interests of the participant firm; or

(3) Receive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower **salary compensation** 65 than a non-Veteran ~~only upon demonstrating that~~ **if** 64 it helps the applicant or participant.

38 CFR Part 74 does not specifically address franchises or franchise agreements. Therefore, it could be determined that an alternative interpretation of the regulation could allow certain franchises to be verified as a VOSB or SDVOSB.

As stated in the previous section the control issue most commonly seen in franchises centers around the lack of strategic planning and long-term decision making due to certain clauses within the franchise agreement. However, depending on the types of restrictions placed on the franchisee it could be reasonable to conclude that the Veteran owner does in fact meet the control requirements of 38 CFR Part 74.

According to the Federal Acquisition Regulation (FAR) § 19.101, for size status determinations, “[i]f a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered

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as affiliated.” This indicates that, at least in regards to determining affiliation for size purposes, some federal agencies have determined that the types of restrictions placed in a franchise agreement do not rise to the level of control by a non-Veteran. However, it is clear from the language of this section of the regulation, that if the franchisor has actual common management or ownership, this could change the determination.

The Small Business Administration (SBA), Office of Hearings and Appeals (OHA) cases dealing with franchise issues follow this approach. When the business is simply a franchise, but the right to profit and the risk of failure lies with the franchisee OHA will not determine that the franchisor controls the business. However, if the level of control granted to the franchisor rises to the level of common management then OHA will deem the franchisor to control. This is evident in OHA decisions the Matter of Crown International Travel, Inc., SBA no. SDBA-163 and Size Appeal of Emergency Pest Control, Inc., SBA No. SIZ-5129. The types of factors that would show common management and control by the franchisor include, but are not limited to, participation by the franchisor in the areas of overhead, offices, improvements, direct expenses, employees, profit advances, financial administration, extension of credit and excessive profit sharing.

Flexibility exists for a policy determination in light of the above. 37

(h) Non-Veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.

(i) Non-Veterans or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Non-Veterans control the board of directors of the applicant or participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-Veterans effectively to prevent a quorum or block actions proposed by the Veterans or service-disabled Veterans.

(2) A non-Veteran or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or participant which directly or indirectly allows the non-Veteran significantly to influence exercise final 135 business decisions of the participant independently of the veteran owner or owners that cannot be overturned by the veteran owner or owners 136, unless an exception is authorized by the Office of Small and Disadvantaged Business Utilization. a signed document that provides 100% control to the owner is provided. 38

Ideas like this put SDVOSB's at a competitive disadvantage in all markets, including VA. Goes to governance, common business practice and GAFC. 170

(3) A non-Veteran or entity controls the applicant or participant or an individual Veteran owner through loan arrangements. Providing a loan guaranty on

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commercially reasonable terms does not, by itself, give a non-Veteran or entity the power to control a firm.

(4) Business relationships exist with non-Veterans or entities which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk.

(j) Exception for deployment. In the event that the Veteran-owner of the participant is activated to active Federal service during a period of military conflict, the participant may be granted a temporary exception for day-to-day control of the business while the Veteran is deployed. To be granted this exception, the participant must provide:

(1) A copy of official orders for activation;

(2) A Continuity of Operations Plan outlining the transfer of day-to-day control, the name and title of the individual designated for control, designated duties, and plan for resumption of control at the end of the activation; and

(3) The participant shall be eligible for this exception during the period beginning on the date that the Veteran is ordered to active duty and ending on the date that is no later than 90 days after the date on which the Veteran is discharged or released from active duty. 144

§ 74.5 How does CVE determine affiliation?

The Center for Veterans Enterprise Verification and Evaluation 74 applies the affiliation rules established by the Small Business Administration in 13 CFR part 121.

Application Guidelines

§ 74.10 Where must an application be filed?

An application for VetBiz-VIP VA VOSB 73 Verification status must be electronically filed in the Vendor Information Pages database located in the Center for Veterans Enterprise Verification and Evaluation's 71 Web portal, <http://www.VetBiz.gov>. Guidelines and forms are located on the Web portal. Upon receipt of the applicant's complete 76 electronic application 77 submission, an acknowledgment message will be dispatched to the concern, containing estimated processing time and other information. Address information for the CVE is also contained on the Web portal. Correspondence may be dispatched to:

Director, Center for Veterans Enterprise Verification and Evaluation 75 (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

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§ 74.11 How does CVE process applications for ~~VetBiz-VIP~~ VA VOSB 78 Verification Program?

(a) The Director, Center for ~~Veterans Enterprise~~ Verification and Evaluation 79, is authorized to approve or deny applications for ~~VetBiz-VIP~~ VA VOSB Verification. The CVE will receive, review and evaluate all ~~VetBiz-VIP~~ VA VOSB Verification applications. CVE will advise each applicant within 30 days, when practicable, after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. CVE will process an application for ~~VetBiz-VIP~~ VA [SDVOSB/ 137]VOSB Verification status within ~~60~~ 90 80 days, when practicable, of receipt of a complete application package. Incomplete application packages will not be processed.

(b) CVE, in its sole discretion, may request clarification of information contained in the application at any time in the eligibility determination process. CVE will take into account any clarifications made by an applicant in response to a request for such by CVE.

(c) An applicant's eligibility will be based on the totality of [*This standard is currently utilized by both CVE and OSDUBU and is supported by 38 CFR 74.12 and 38 CFR 74.20 however recent court rulings have set the precedence that a policy of over inclusion will provide the best protection for the Department.* 39] circumstances existing on the date of application, except where clarification is made pursuant to paragraph (b) of this section or as provided in paragraph (d) of this section. The applicant bears the burden of proof to establish its status as a VOSB or SDVOSB with adequate evidence. *Need to revise to reflect PL 111-275 that applicants are required to submit all documents to CVE. Marry up with 40 The regs must include the documentation for the various types of businesses now shown on the website. Remember, the idea is to prevent a reasonable percentage of the ineligible firms from qualifying, not every firm and let the protest process take care of the rest.* 138

This presumes that CVE has adequate, acceptable and unambiguous standards and that CVE actually understands both the content and interaction of both available and required documentation. We can't continue with this "we'll know it when we see it" attitude without any QA checks for consistency and reality. 171

(d) Changed circumstances for an applicant occurring subsequent to its application and which adversely affect eligibility will be considered and may constitute grounds for denial of the application. The applicant must inform CVE of any changed circumstances that could adversely affect its eligibility for the program (*i.e.*, ownership or control changes per 74.XX 139) during its application review. Failure to inform CVE of any such changed circumstances constitutes good cause for which CVE may withdraw verified status for the participant if non-compliance is discovered after a participant has been verified.

CVE needs to be able to establish which changes need to be reported and how these changes need to be reported. For example, if a minority owner/member sells their interest, this is not going to affect verification so why waste all those resources. 172

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I don't understand why the operating agreement can't allow for future options where the veteran is not the owner, as long as any changes to ownership/control are reported to CVE in a timely manner. 216

(e) The decision of the Director, CVE, to approve or deny an application will be in writing. A decision to deny verification status will state the specific reasons for denial, and will inform the applicant of any appeal rights.

Current denials are not being signed by the director. 173

When it is determined that something limits a Veterans verification status a preliminary finding should be provided stating what the deficiencies are and the Veteran should have 30 days to correct them before a final determination is made. That way a Veteran does not have to wait six months to change a few words in his/her operating agreement. 238

(f) If the Director, CVE, approves the application, the date of the approval letter is the date of participant verification for purposes of determining the participant's verification eligibility term.

(g) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

One of the biggest complaints I receive and what I consider to be the greatest flaw in the verification process is the fact that a reviewer will review an operating agreement, for example, and find one or two things wrong with the agreement and deny the application for verification on that basis. When the veteran submits a new operating agreement for verification, the reviewer finds something else that was in the initial agreement and was never mentioned. The application is denied and the process starts all over again. It would be much more efficient for both CVE and the veterans if CVE highlighted everything they found wrong in the paperwork and allowed the veteran to correct everything at once. Of course, if the new material contains problems not included in previous documentation, then CVE is justified in denying the application. 197

§ 74.12 What must a concern submit to apply for VetBiz VIP Verification Program?

Need to revise to reflect PL 111-275 that applicants are required to submit all documents to CVE. Marry up with 41

Each VetBiz VIP Verification applicant must submit the electronic forms and attachments **documentation related to the legal structure, ownership and control of the concern that** *[Need to clarify that due to PL 111-275 document submission is now the default standard 42]* CVE requires. All electronic forms are available on the VetBiz.gov Vendor Information Pages database Web pages. At the time the applicant dispatches the electronic forms, the applicant must also retain on file at the principal place of business a completed copy of the electronic forms supplemented by manual records that will be used in verification examinations. ~~These forms and attachments will include, but not be~~ **The documentation to be submitted to CVE includes, but is not limited to:** Financial statements; owner's Federal personal and business tax returns; ~~payroll records and~~ **personal history statements; and Request for Copy or Transcript of Tax Form (IRS Form 4506) for up to 3 years.** ~~An applicant must also retain in the application file IRS Form~~

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4506, Request for Copy or Transcript of Tax Form. Other documents, which may be reviewed include (if applicable): Articles of Incorporation/Organization; corporate by-laws or operating agreements; shareholder agreements; trust agreements; franchise agreements, organizational, annual and board/member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses. 43 These materials shall be filed together to maximize efficiency of verification examination visits. Together with the electronic documents, these manual records will provide the CVE verification examiner with sufficient information to establish the management, control and operating status of the business on the date of submission. *This needs to list docs by type of business structure.* 140

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675)

The documentation that CVE requires is not complete or correct. This whole section needs to be revised or somewhere else they need to correct their requirements. This is causing wrong decisions and a lot of extra, unnecessary work. 174

Better define the documents to be submitted. Must an applicant also submit original signed copies, just clarify. 222

§ 74.13 Can an applicant ask CVE to reconsider its initial decision to deny an application? *Does OSDDBU want to consider a different deciding official for the R4Rs* 44

Every denial should require legal review. 239

(a) An applicant may request that the Director, CVE, reconsider his or her decision to deny an application by filing a request for reconsideration with CVE within 30 days of receipt of CVE's denial decision. "Filing" means a document is received by CVE by 5:30 p.m., Eastern Time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at CVE. Requests for reconsideration must be submitted in accordance with the directions in the denial letter. 45 Submit requests for reconsideration to: Director, Center for Veterans Enterprise (OOVE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 the address identified in the denial letter. A formal decision will be issued within 60 days after receipt, when practicable. 46

(b) The Director, CVE, will issue a written decision within 60 90 96 days, when practicable, of receipt of the applicant's request. The Director, CVE, may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied on other grounds not included in the original denial, the application

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shall be treated as an original denial and eligible for reconsideration unless the application is determined to contain intentionally misleading information. 141 The Director, CVE, will explain why the applicant is not eligible for the VetBiz VIP VA VOSB 81 Verification and give specific reasons for the denial.

I've run across a situation where there was a dispute between a client and CVE about whether the second denial was "on other grounds". In that situation, CVE determined that the veteran did not unconditionally control the LLC because the operating agreement contained a right of first refusal. The veteran deleted this provision and submitted a new operating agreement. The CVE again denied verification because the operating agreement contained a transfer restriction – included in the original document but not identified by CVE until they reviewed the operating agreement for a second time. CVE did not allow that veteran to submit a reconsideration request because they believed the grounds for denial to be the same but the veteran seems unfairly penalized in this scenario. 198

This nonsense about starting from scratch every time is ridiculous. I have had clients who were denied 3 and 4 times, every time for something different. You should get one shot at it and for reconsideration only look at whether those issues which caused denial were corrected. This would also greatly speed up reconsideration. 240

~~(c) If the Director, CVE, denies the application solely on issues not raised in the initial denial, the applicant may ask for reconsideration as if it were an initial denial. 83~~

(d) If CVE determines that a concern may not qualify as small, they may directly deny an application for VetBiz VIP VA VOSB 82 Verification or may request a formal size determination from the U.S. Small Business Administration (SBA). A concern whose application is denied because it is other than a small business concern by CVE may request a formal size determination from the SBA Associate Administrator, Office of Government Contracting (ATTN: Director, Office of Size Standards), 409 3rd Street, SW., Washington, DC 20416. A favorable determination by SBA will enable the firm to immediately submit a new VetBiz VIP VA VOSB Verification.

I am fairly sure that VA cannot make a determination that a SDVOSB/VOSB is small or not small. Only SBA has jurisdiction to make that determination; thus, the regulation should provide that, if VA believes the concern is other than small, that it ask SBA for a size determination. 199

If a firm goes to the SBA for a size determination and is found to be small, it should NOT have to submit a new application but rather the prior denial should be overturned. 223

Have the reapplication period be one year in cases where the applicant was found ineligible under 74.13 e, 60 days in all other cases. 224

(e) A denial decision that is based on the failure to meet any Veteran or service-disabled Veteran eligibility criteria is not subject to a request for reconsideration and is the final decision of CVE.

~~(f) Except as provided in paragraph (c) of this section, 84 the decision on the request for reconsideration shall be final.~~

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(g) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

There is a suggestion that a previously approved firm should remain on VIP after an initial denial while a request for reconsideration is pending. 47

§ 74.14 Can an applicant or participant reapply for admission to the VetBiz-VIP VA VOSB 95 Verification Program?

Once an application, a request for reconsideration, or an appeal to a cancellation notice, as applicable, has been denied **or otherwise dismissed** [*To address timeliness decisions 48*], the applicant or participant shall be required to wait for a period of **6 months 60 days 98** before a new application will be processed by CVE.

A suggestion was made to eliminate the waiting period. 97

If CVE would communicate with applicant during process, there should be no, nada, zero denials. One of two things should come out of this process – verification or an indictment. 175

Since many denials are made on legal technicalities, many of which CVE could have raised or cleared up earlier in the process – it seems very unfair to have a veteran wait 6 months to reapply. 200

§ 74.15 What length of time may a business participate in VetBiz-VIP VA VOSB 94 Verification Program? *The addition of new subsections and renumbering of subsections is meant to logically include issues which may have been placed elsewhere or were previously unaddressed. 49*

Verification eligibility period should be extended to 3 years and reverification in year 4 should not be as extensive as the initial verification if nothing has changed with the company regarding the ownership and status of the company. 234

(a) A participant receives an eligibility term of ~~1-year~~ **2 years 85 [48 months 142]** from the date of CVE's approval letter establishing verified status. ~~The participant must maintain its eligibility during its tenure and must inform CVE of any changes that would adversely affect its eligibility. The eligibility term may be shortened by cancellation by CVE or voluntary withdrawal by the participant (i.e., no longer eligible as a small business concern), as provided for in this subpart.~~

~~(b) When at least 50 percent of the assets of a concern are the same as those of an affiliated business, the concern will not be eligible for verification 86 [This provision was placed elsewhere previously and logically belonged in this section. However we discussed the possibility of removing this provision all together as really associated with affiliation, a size issue.]~~

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(b) The participant must maintain its eligibility during its tenure and must inform CVE [*Many concerns have failed to notify CVE of changes until identified in the renewal process. 50*] of any changes that would adversely affect its eligibility, **for example:**

(i) Death of Veteran or service-disabled Veteran upon whom eligibility of the concern was based;

(ii) Sale or transfer of ownership interest that impacts 51% ownership interest by Veteran(s) or service-disabled Veteran(s);

(iii) Change(s) to board of directors, managers, or partners that impacts control by a Veteran or service disabled Veteran;

(iv) Change to small business size status. *Any of these changes i-iv, if identified without having been raised by the VOSB firm can and have resulted in expulsion from the VIP listing. 51*

This should be moved to 74.11(d) and, again, a method needs to be established to report this to CVE 176

(c) The eligibility term may be shortened by cancellation by CVE or voluntary withdrawal by the participant, as provided for in this subpart.

(e) (d) CVE may initiate a verification examination whenever it receives credible information calling into the question a participant's eligibility as a VOSB. Upon its completion of the examination, CVE will issue a written decision regarding the continued eligibility status of the questioned participant.

(e) (e) If CVE finds that the participant does not qualify as a VOSB, the procedures at §74.22 will apply.

(e) (f) If CVE finds that the participant continues to qualify as a VOSB, the program term remains in effect.

(b) (g) When at least 50 percent of the assets of a concern are the same as those of an affiliated business, the concern will not be eligible for verification. *This provision was placed elsewhere previously and logically belonged in this section. However we discussed the possibility of removing this provision all together. 52*

References to affiliation must be removed. May be a reasonable standard, but how will CVE determine this and what standard will be used? 177

I recommend deleting the provision above. SBA alone deals with affiliation and the effect thereof on a company's size. 201

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74.16 How does a verified VOSB or SDVOSB maintain VA VOSB Verification

Proposed new section on maintain verified status not involving entire new document submission. See HUBZone Example 53

(a) Submit new VA Form 0877

(b) would address this. During previous discussions with VSOs about this issue a simple affidavit form was discussed and CVE committed to implementing it, but never did. Delete this 178

(b) Certification or representation that there have been no changes to ownership or control that adversely affect its eligibility

A simple checklist, e.g. referenced in 74.15 above would suffice. 179

HUBZone Example:

~~Any qualified HUBZone SBC seeking to remain on the List must recertify every three years to SBA that it remains a qualified HUBZone SBC (See § 126.501 for ongoing obligations). Concerns wishing to remain in the program without any interruption must recertify their continued eligibility to SBA within 30 calendar days after the third anniversary of their date of certification and each subsequent three-year period. Failure to do so will result in SBA initiating decertification proceedings. Once decertified, the concern then would have to submit a new application for certification pursuant to § 126.309. The recertification to SBA must be in writing and must represent that the circumstances relative to eligibility that existed on the date of certification showing on the List have not materially changed and that the concern meets any new eligibility requirements. 180~~

(c) Simplified Reverification is effective for ~~only one~~ **two 98** years, and only for firms who have been previously verified with a full document examination. 86

Oversight Guidelines

§ 74.20 What is a verification examination and what will CVE examine?

This entire section confuses the examination/evaluation process with on-site examinations. Needs to be clarified. 181

The scope of the examination is at odds with the SBA's processes. SBA does not conduct an on-site examination as part of the 8(a) BDP application process, why would the VA do this when an applicant has sworn under penalty of law that the information submitted is accurate. The Vet and Disabled Vet community should not be held to more stringent standards than any other non-Veteran group, despite the rampant instances of fraud. 226

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(a) *General.* A verification examination is an investigation by CVE officials, which verifies the accuracy of any statement or information provided as part of the VetBiz VIP Verification application process. Thus, examiners may verify that the concern currently meets the eligibility requirements, and that it met such requirements at the time of its application or its most recent size recertification. An examination may be conducted on a random, unannounced basis, or upon receipt of specific and credible information alleging that a participant no longer meets eligibility requirements.

(b) *Scope of examination.* CVE may conduct the examination, or parts of the program examination, at one or all of the participant's offices. CVE will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the legal structure, ownership and control of the concern. ~~As a minimum, Examiners shall review all documents supporting the application, as described in §74.12, all organizing documents, financial documents and publicly available information as well as any information identified during an on-site examination~~ supporting the application, as required by 38 CFR 74.12. ~~54~~ These include: Financial statements; Federal personal and business tax returns; personal history statements; and Request for Copy or Transcript of Tax Form (IRS Form 4506) for up to 3 years. Other documents, which may be reviewed include (if applicable): Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses.

74.21 - What are the ways a business may exit VetBiz VIP VA VOSB 93 Verification Program status

A participant may:

(a) Voluntarily cancel its status by submitting a written request to CVE requesting that the "verified" status button ~~the participant concern be~~ removed from the Vendor Information Pages database; or *It is no longer possible to be listed in VIP and yet not verified as such this wording required revision 55*

~~(b) Delete its record entirely from the Vendor Information Pages database; or~~

(e)(b) CVE may **C**ancel the "verified" status button of a participant concern for good cause upon formal notice to the participant. Examples of good cause include, but are not limited to, the following which are examples of good cause only and are solely intended to be illustrative. ~~56~~

(1) Submission of false information in the participant's VetBiz VIP Verification application.

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(2) Failure by the participant to maintain its eligibility for program participation.

(3) Failure by the participant for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, management, and control by Veteran(s), service-disabled Veteran(s) 87 or surviving spouses.

(4) Failure by the concern to disclose to CVE the extent to which non-Veteran persons or firms participate in the management of the participant.

~~(5) Debarment, suspension, voluntary exclusion, or ineligibility of the participant or its owners. This provision is in conflict with §74.2(b) which allows for immediate removal in such circumstances. 57~~

~~(6)~~(5) A pattern of Failure to make required submissions or responses to CVE in a timely manner, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request. *In order to maximize use of CVE resources VA should avoid review of incomplete applications. This is also in keeping with P.L. 111-275. 58*

~~(7)~~ (6) Cessation of the participant's business operations.

~~(8) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government. This provision is in conflict with §74.2(c) which allows for immediate removal in such circumstances. 59~~

~~(9)~~ (7) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

~~(10)~~ (8) Failure by the concern to provide an updated application (VA Form 0877) within 60 days of any change in ownership.

(9) Other grounds for canceling a participant's verified status include any other cause of so serious or compelling a nature that it affects the present responsibility of the participant. *This just logically does not need to be its on section and the numbering gets confusing. 60 Legal, character, what? 143*
And what standard(s) will CVE utilize? Lck of viable standards = remove. 182

~~(d)~~ (c) The examples of good cause listed in paragraph ~~(e)~~ (b) of this section are intended to be illustrative only. Other grounds for canceling a participant's verified status include any other cause of so serious or compelling a nature that it affects the present responsibility of the participant. 62

§ 74.22 What are the procedures for cancellation?

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(a) *General.* When CVE believes that a participant's verified status should be cancelled prior to the expiration of its eligibility term, CVE will notify the participant in writing. The Notice of Proposed Cancellation Letter will set forth the specific facts and reasons for CVE's findings, and will notify the participant that it has 30 days from the date it receives the letter to submit a written response to CVE explaining why the proposed ground(s) should not justify cancellation. **Within this explanation, in response to the Notice of Cancellation, procedures do allow for corrective actions by the participant.** 88

I don't understand the need or justification for the new language – what procedures? And what type of corrective actions are contemplated by the new language? 202

(b) *Recommendation and decision.* Following the 30-day response period, the Director, CVE, will consider any information submitted by the participant. Upon determining that cancellation is not warranted, the Director, CVE, will notify the participant in writing. If cancellation appears warranted, the Director, CVE, will make a decision whether to cancel the participant's verified status.

(c) *Notice requirements.* Upon deciding that cancellation is warranted, the Director, CVE, will issue a Notice of Verified Status Cancellation. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may re-apply **in accordance with the period established in section 74.14** 89 after it has met all eligibility criteria. **Unless appealed in a timely manner, this Notice shall be final.** 90

(d) *Effect of verified status cancellation.* ~~After the effective date of cancellation,~~ **Effect of Notice of Proposed Cancellation.** Upon issuance of a Notice of Proposed Cancellation, 91 a participant is no longer eligible to appear as “verified” in the VetBiz VIP database **until a favorable verification determination is made.** [*In keeping with the treatment of debarment actions firms are listed in EPLS once given notice of potential action*] 92 However, such concern is obligated to perform previously awarded contracts to the completion of their existing term of performance.

(e) *Appeals.* A participant may file an appeal with the Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise, concerning the Notice of Verified Status Cancellation within 30 days of receipt of CVE's cancellation decision. “Filing” means a document is received by CVE by 5:30 p.m., eastern time, on that day. ~~Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at CVE. Submit appeals to: Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.~~ **Documents must be filed electronically.** 211 A formal decision will be issued within 60 days after receipt. The decision on the appeal shall be final.

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Records Management

§ 74.25 What types of personally identifiable information will VA collect?

In order to establish owner eligibility, the Department will collect individual names and Social Security numbers for Veterans, service-disabled Veterans and surviving spouses who represent themselves as having ownership and control interests in a specific business seeking to obtain verified status.

§ 74.26 What types of business information will VA collect?

VA will examine a variety of business records. See §74.12, "What is a verification examination and what will CVE examine?"

§ 74.27 How will VA store information?

VA intends to store records provided to complete the VetBiz Vendor Information Pages registration fully electronically on the Department's secure servers. CVE personnel will compare information provided concerning owners who have Veteran status, service-disabled Veteran status or surviving spouse status against electronic records maintained by the Department's Veterans Benefits Administration. Records collected during examination visits will be scanned onto portable media and fully secured in the Center for Veterans Enterprise, located in Washington, DC.

§ 74.28 Who may examine records?

Personnel from the Department of Veterans Affairs, Center for Veterans Enterprise and its agents, including personnel from the Small Business Administration, may examine records to ascertain the ownership and control of the applicant or participant.

§ 74.29 When will VA dispose of records?

The records, including those pertaining to businesses not determined to be eligible for the program, will be kept intact and in good condition for seven years following a program examination or the date of the last Notice of Verified Status Approval letter. Longer retention will not be required unless a written request is received from the Government Accountability Office not later than 30 days prior to the end of the retention period.

(Authority: 38 U.S.C. 8127(f))